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FISCAL IMPACT STATEMENT

LS 7770

BILL NUMBER: HB 1717

NOTE PREPARED: Jan 14, 2007

BILL AMENDED:

SUBJECT: Regulation of Mortgage Brokers.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State

Summary of Legislation: *Transfer of Responsibility:* The bill transfers responsibility for the: (1) licensure of mortgage brokers; and (2) registration of mortgage loan originators; from the Securities Commissioner to the Department of Financial Institutions.

Criminal History Checks: It requires the Department to request a national criminal history background check through the State Police Department for all applicants for an initial license or registration after June 30, 2007.

Education Requirements: The bill establishes examination and education requirements for individuals applying for an initial license or registration after December 31, 2008. It also establishes continuing education requirements for individuals renewing a license or registration after December 31, 2008.

Fingerprints: The bill requires a licensee to maintain on file with the Department a complete set of fingerprints for: (1) the licensee, if the licensee is an individual; and (2) each registrant covered by the license.

Prohibited Acts: It prohibits certain acts by licensees and registrants.

Mortgage Broker Regulation Account: It creates the Mortgage Broker Regulation Account in the state General Fund.

Expiration of Licenses: The bill provides that licenses and registrations issued to mortgage brokers and mortgage loan originators before July 1, 2007, expire on January 1, 2008.

Effective Date: Upon passage; July 1, 2007.

Explanation of State Expenditures: *Summary:* The bill will increase costs for the Department of Financial Institutions to regulate mortgage brokers and for the Indiana State Police to perform national criminal history checks. However, to the extent that the registration program is transferred from the Securities Commissioner within the Office of the Secretary of State and that there are fees associated with the issue of licenses and other expenses of regulation, the increase in cost may be offset. The bill will also increase costs for incarceration of individuals who violate the provisions concerning registered mortgage brokers.

Background on the Responsibilities of the Department of Financial Institutions: Under the bill, after June 30, 2007, a person shall not engage in mortgage brokerage business in Indiana unless the person has a license from the Department of Financial Institutions (DFI). The DFI will approve a course of study for initial and renewing applicants, and adopt and administer, or have administered by a third party, an examination that determines the examinee's competency in primary and subordinate mortgage transactions and that tests the examinee's knowledge of the state registration law and any rules adopted by the DFI.

The DFI vets applicants by requesting a national criminal history background check through the Indiana State Police (ISP) and checking the qualifications, background, licensing status, and service history of the applicant and each registrant. The DFI will approve a license and issue a certificate of registration for each registrant, or deny the license. The DFI may not deny, suspend, or revoke a license without prior notice to all interested parties and an opportunity for a hearing or written finding of fact and conclusions of law.

Under the bill, the DFI may adopt rules to implement the chapter, make investigations and examinations, issue notices and orders, hold and conduct hearings, hear evidence, conduct inquiries, receive reports of investigators, administer oaths, subpoena witnesses and compel their attendance, order dispositions to be taken, order that witnesses appear, and provide interpretive opinions or issue determinations. In addition to other remedies, the DFI may impose civil penalties not to exceed \$10,000 for violations of the chapter and bring actions in Marion County Circuit or Superior Court to enforce the penalties imposed.

The bill indicates that all expenditures to administer this chapter are appropriated from the state General Fund. (See *Explanation of State Revenue* concerning deposit of fees and other revenues received under the chapter.)

Criminal History Checks and Fingerprints: The bill requires the ISP to process DFI requests for national criminal history background checks and forward all fingerprints submitted by an applicant to the Federal Bureau of Investigation (FBI) for the release of criminal history information. A national criminal history check costs \$39, with \$24 going to the FBI and \$15 going to the ISP. Fingerprints are collected at ISP posts for no charge and at local law enforcement agencies for a charge that is deposited in local funds. Under the bill, the applicant is responsible for all of the costs associated with a criminal history background check.

Felony Offenses: The bill provides for a Class D felony for violations of the prohibitions established in the bill. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to a Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Mortgage Broker Regulation Account:* An initial application fee of \$500 and a renewal fee of \$250 is collected by the DFI. Licenses issued before July 1, 2007, by the Securities Commission will expire on July 1, 2008, and any license fee may be prorated against the initial application fee from the DFI. The fee for license or renewal for a loan broker under current law is \$200, and there are 1,110 registered loan brokers. Assuming that each loan broker will apply for a license through DFI, the maximum revenue for initial applications will be \$555,000 (but reduced to the extent that the new fee for individuals with an existing license may be prorated), and the fee for renewal of all licenses would be \$277,500 at the time of renewal.

All fees and funds accruing from administration of the chapter are to be placed in the Mortgage Broker Regulation Account (MBRA) of the state General Fund, established under this bill. The MBRA is administered by the State Treasurer, and the funds in the MBRA will not revert to the state General Fund at the end of the year. Costs of investigations and civil penalties collected for violations of the chapter are to be deposited in the Financial Institutions Fund. The Fund will be used, with the approval of the Budget Agency, to supplement the General Funds appropriated for administration of this chapter.

Background on the Securities Commission: In FY 2006, the Securities Commission received \$282,789 for business licenses, but this amount also includes other types of licensees issued by the Commission.

Felony Offenses: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenues would likely be small.

Explanation of Local Expenditures: *Felony Offenses:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Felony Offenses:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Securities Commission; Department of Financial Institutions; Department of Correction; Indiana State Police; State Treasurer.

Local Agencies Affected: Trial courts, local law enforcement agencies.

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